IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Pushpendra Singh
Vs.
State

S.B. CRIMINAL MISC.PETITION NO.**2265/2006**

under Section 482 Cr.P.C.

Date of Order:- **17/11/2006.**

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Abdul Kalam Khan for the petitioner.
Mr. Arun Sharma P.P. for the State.

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BY THE COURT :

The instant petition u/S.482 Cr.P.C. has been filed by accused-petitioner Pushpendra Singh against the order dated 4/11/2006 passed by the learned District and Sessions Judge, Kota in Cr.Misc.Case (Bail Application No.2560/06) whereby he seeks deletion of the condition to furnish F.D.R. or bank guarantee in the sum of Rs.1,40,000/- for a minimum period of 61 months for his release on bail.

An F.I.R. No.181/05 has been registered against the accused-petitioner on 9/11/2005 at P.S. Simliya, Distt.Kota for offences u/Ss.409, 420, 467, 468 and 471 I.P.C. He was arrested on 30/10/2006 and is presently in custody. He moved a bail application u/S.439 Cr.P.C. before the learned District and Sessions Judge, Kota who allowed the application on 4/11/2006 and directed the release of the petitioner on bail imposing the aforesaid impugned condition which according

to him is against the provisions of Section 439 r/w. Section 437(3) Cr.P.C.

I have heard learned counsel for the petitioner, learned Public Prosecutor for the State and have perused the impugned-order.

Section 440 Cr.P.C. provides that amount of every bond to be executed under this Chapter shall be fixed with due regard to the circumstances of the case and **shall not be excessive** and the High Court or the Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

Section 445 Cr.P.C. provides that when any person is required by any court or officer to execute a bond with or without sureties, such court or officer may except in the case of a bond of good behaviour **permit** him to deposit a sum of money or government promissory notes to such amount as the court or officer may fix in lieu of executing such bond.

It is now well-settled that the conditions to be imposed in the order granting bail should not be onerous, unconscionable and unreasonable. Such condition should not be imposed in the bail order as may virtually deny benefit of bail to the accused. In the instant case, the learned Sessions Judge has directed the petitioner to furnish bank guarantee or F.D.R. in the sum of Rs.1,40,000/- for a minimum period of 61 months which condition in the facts and circumstances of the case is not only onerous, unconscionable and unreasonable but it also

virtually denies him opportunity of being released on bail and the condition of deposit of bank guarantee or furnishing of F.D.R. is also legally unsustainable as it tantamounts to deprive the petitioner from being released on bail.

In Ram Babu Vs. State of Rajasthan, S. B. Criminal Misc. Petition No. 1328 of 2005 decided on 24.10.2005, it has been observed that furnishing of bank guarantee being not a statutory condition ought to be deleted and the sentence imposed upon the convict may be suspended on his furnishing a personal bond with two sureties only. Section 445 Cr.P.C. also authorizes the court to permit accused to deposit a sum of money or promissory notes of such amount as the court or officer may fix in lieu of executing such bond. It does not authorize the court or the officer to require the accused-petitioner to furnish bank guarantee or F.D.R.

Learned Public Prosecutor also does not dispute this settled legal position.

Therefore, this petition deserves to be allowed and condition of furnishing bank guarantee or F.D.R. deserves to be quashed and set-aside for securing the ends of justice.

Accordingly, this petition u/S.482 Cr.P.C. is allowed and the condition of furnishing bank guarantee or F.D.R. in the sum of Rs.1,40,000/- for a minimum period of 61 months imposed by the learned District and

Sessions Judge, Kota in the impugned-order dated 4/11/2006 arising out of F.I.R. No.181/05 P.S. Simliya, Kota for offences u/Ss.409, 420, 467, 468 and 471 I.P.C. is quashed and set-aside. However, the direction of the learned District and Sessions Judge, Kota to furnish a personal bond in the sum of Rs.40,000/- with two sureties in the sum of Rs.20,000/- each to the satisfaction of the trial court for his release on bail with the stipulation to appear in the court on each date of hearing is affirmed.

(HARBANS LAL), J.

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